

OGC 77-0645
28 January 1977

MEMORANDUM FOR : AD/DCI/IC
FROM :
Associate General Counsel
SUBJECT : Possible Restrictions on Unofficial Travel

1. This is with reference to the presented DCID which would restrict or discourage private travel in hazardous areas by Intelligence Community personnel who have or have had access to sensitive compartmented information. This responds also to your request of several months ago for an agreed position by the pertinent IC legal staffs as to the restrictions which legally could be applied to discourage or prevent such travel.

2. I have worked up the attached memorandum to reflect the views expressed by the several legal staffs in the meetings and other communications we have had. The memorandum represents at least a minimum position acceptable to all, although there was some support for more restrictive measures and it has been suggested that the practical considerations as to available administrative actions should be stressed. The agreement reflected in the memorandum therefore would suggest no legal objections to the DCID proposed for action by SEACOM at its meeting of 9 February.



Attachment

cc: Ralph Goldenberg, ERDA
Joseph Davis, FBI
 DIA
Russell Munk, Treasury
 NSA
Jeffrey Smith, State

28 January 1977

MEMORANDUM

FROM :
Associate General Counsel

SUBJECT : Possible Restrictions on Unofficial Travel

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1. What restrictions can be legally placed on unofficial travel of employees having access to certain categories of sensitive compartmented information? In particular, may restrictions be placed on the unofficial travel of such persons to countries or areas where there is danger of compromise of the information?

2. By way of general background to the questions, it may be noted that the Supreme Court has upheld the authority of the Government to restrict travel on national security grounds. It is clear, again from Supreme Court decisions, that United States citizens have a constitutional right to travel abroad--freedom to travel is an element of the liberty of which citizens cannot be denied without due process of law. But the due process requirements do not mean that no restrictions may be imposed on foreign travel. For example, and relevant to these questions, the court has upheld the authority of the Secretary of State to refuse to validate passports for travel to certain areas when he has concluded that such travel "might involve the Nation in dangerous international incidents."

3. It would appear legally permissible therefore for agencies to adopt regulations restricting travel to hazardous areas by employees who possess sensitive compartmented information or other national security information. That is, it would not be beyond the authority of agencies to adopt such regulations. Clearly there is a direct relationship between the functions and missions of the agencies and any such regulations--the need to protect the information.

4. The enforceability of any such regulation would vary in different situations, and among the agencies, but there would be no need to refrain

from adopting regulations merely because the means and authority for enforcement might not be uniform. In some instances, agencies could request compliance; in some cases, employees could be reassigned to other duties where access to sensitive compartmented information is no longer needed. A department's regulations could provide for administrative sanctions, such as suspension or dismissal. In some cases, suspension or dismissal might be in order even without express provision to that effect in the departmental travel regulations. As a practical matter, therefore, it would be necessary for the department to determine the available and desirable means of enforcement. And it should be recognized that means of enforcement as to former employees and retired personnel probably are non-existent.

5. Ultimate enforceability in the courts of course cannot be certain. But with a strong factual situation--for example, current practices of a country of detaining, harassing or provoking such persons for the purpose of extracting information from them or to exploit them for probable espionage purposes--it would seem quite possible that the courts would uphold the regulations and the sanctions enforcing them.

6. In sum, it is believed that agencies may restrict the unofficial travel of employees who possess national security information, that administrative sanctions may be imposed and that there is basis to believe such sanctions would be upheld by the courts.



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Approved For Release 2005/05/23 : CIA-RDP82M00591R000400080008-3

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